Supreme Court, U.S.
FILED

961879 APR 28 1997

No. OFFICE OF THE CLERK

In The
Supreme Court Of The United States

October Term, 1996

DARLENE C. SAMMARCO,

Petitioner,

vs.

FORD MOTOR COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT

EXECUTEAM COI

Darlene C. Sammarco, Pro Se
Paralegal
1307 52nd Ave. N.E.
Fridley, MN. 55421
(612) 571-5984

• 800-747-8793

64 pp

QUESTIONS PRESENTED

1. Was the statute of limitations tolled?
   a) Petitioner's 1993 Workers' Compensation claim was open ended stating, "claimed injury Jan. '61 to present." Petitioner continues to experience Post Traumatic Stress noted as the date of onset on August 16, 1985 to present. Petitioner continues to have nightmares about Ford job harassment and injuries.
   b) The fact that Ford management knew about the injures and failed to report these injuries to Workers' Compensation makes Ford more liable, since state law requires that the employer report job related injuries within 30 days.
   c) Workers' Compensation laws allow an action for civil damages for obstructing an employee from obtaining benefits. Minn. Stat. 176.82 subd.(1). d) Ford's Dr. Nucy Rajput encouraged petitioner to retire and seek social security benefits instead of workers' compensation. M.S. 176.82 subd. (2).
2. Should Pro Se litigant have been advised "special legal advice" is available through the Department of Labor and Industry?
   a) Petitioner was unaware that "special legal advice" for Workers' Compensation claimants

was available until after a Workers' Compensation Legal Research class, which by then was too late to assist petitioner with her claim.

b) The Workers' Compensation judge incorrectly stated that petitioner hired 4 or 5 attorneys for lawsuits.

c) There is no indication in any transcript that states the petitioner didn't want or need the assistance of an attorney. The compensation judge merely asked if petitioner knew she had a right to have an attorney, but not if she was able to obtain the services of an attorney, for which the answer would have been "no".

d) An attorney that Petitioner asked to appeal the case declined, but did state that the compensation judge made fun of her because she was PRO SE.

3. The compensation judge and appeals court judges commit judicial errors prejudicing employee's claim?

a) Appellate Court Chief Judge Thomas Johnson told D.R.S. Consultant Antonello he could ignore a subpoena written by another judge, though employee paid the D.R.S. consultant to appear. Judge Johnson acted Ex-Parte, unethically and with bias. Johnson should have recused himself from the appeal hearing.

b) Data Privacy Violations. Inclusion of inaccurate

privileged medical documents of D.R.S. Antonello's and Dr. Kollmorgan into the court records by Judge Culnane and Appeals Chief Judge Thomas Johnson against petitioner's objections, violated federal and state Data Privacy Laws, as noted in precedent case Jaffee v. Redman, 51 Fed 3rd 1346 (1995), the U.S. Supreme Court, in Writ of Certiorari, 116 SCT 1923 (1996), found Redman's Right to Privacy had been violated. 5 U.S.C. 552 (a) Rule 501-Federal Rules of Evidence, Minn.Stat. 13.04, and Minn.Stat. 595.02(g) 1994.

4. Did employee's mental incapacity toll the statute of limitations?

   a) Employee is currently receiving John Hancock checks for disability and Social Security disability checks.

   b) Ford's Dr. Block stated there wasn't any reason to evaluate petitioner because of her permanent disability. When Ford, Social Security, and John Hancock Ins. believe petitioner is permanently disabled, the Compensation judge and Appeals court judges should concur with the findings.

   c) Minnesota legislators have not yet "defined" the meaning of incapacity as it relates to workers' compensation laws. There are no precedent case laws. To establish the meaning

of incapacity, it is essential that the legislators address this issue or that this instant case be used to determine the meaning of incapacity as it related to workers' compensation.

d) Ford counsel's alleges incapacity equates to incompetence in mental commitment laws. With this logic, anyone mentally incapacitated must then be mentally ill.

e) The Compensation judge admitted the Legislature has yet to define the "term" incapacity; therefore, no laws exist to determine petitioners capacity. Until the mental illness label is removed, the petitioner remains mentally incapacitated, at least in state and federal files.

f) The compensation hearing judge, the three panel appellant court judges and the Minnesota Supreme Court failed to make a judicial decision on this important question stated by the petitioner.

g) Minnesota law does not allow a remedy to expunge false commitment documents. The 1985 commitment proceedings stating petitioner is mentally ill continue to remain a matter of "public record". A Paranoid Schizophrenic label is a serious charge to be brought against an individual, and should not be stated without at least some degree of

testing, or criteria in DSM-IV psychiatrists manual. for 295.30 Paranoid Type. A type of Schizophrenia in which the following criteria are met:

A. Preoccupation with one or more delusions or frequent auditory hallucinations.

B. None of the following is prominent: disorganized speech, disorganized or catatonic behavior, or flat or inappropriate affect.

h) Petitioner admits to a mental disability of episodes of Post Traumatic Stress but petitioner does not have hallucinations or delusions. As to Paranoia, petitioner bases her statements on fact and not the fiction reported by courts and medical records.

i) Minnesota legislators admitted in a Star and Tribune newspaper article February 8, 1996, that the Minnesota government has used mentally retarded in medical experiments in Minnesota State Asylums for over a hundred years. Psychiatrists used other vulnerable persons as well.

TABLE OF CONTENTS

Page

I. Questions Presented i

II. Opinions Below 1

III. Jurisdiction 1

IV. Constitutional and Statutory Provisions Involved .. 2

V. Statement of the Case 2

A. Factual Background 2

B. Procedural Background 11

VI. Reasons for Granting this Writ 11

A. Certiorari should be granted because of Due Process issues. The questions posed to the Minnesota Courts were not answered in substance. Compensation judge and Workers' Compensation Appeals Court admitted privileged documents into the record 11

B. Federal law allows redress and remedy Minnesota has no remedy 12

C. Petitioner has exhausted all remedies 14

D. There is bias against petitioner at all levels of Minnesota government 15

E. Federal government is allowed to intervene when questions of constitutionality affect public interest. Fairness requires a decision by the United States Supreme Court 18

VII. Conclusion 19

TABLE OF AUTHORITIES

CASE LAW

Page

Jaffee v. Redman, 51 Fed. 3rd 1346 (1995), U.S. Supreme Court, in Writ of Certiorari, 116 SCT 1923 (1996) found Redman's Right to Privacy had been violated iii

Anderson v. U.S. Veteran's Hospital, 128 N.W. 2d 710 (1965), Dr. Anderson's rights were violated and he was granted a Writ of Habeas Corpus and Restoration to Capacity 13

In the Matter of Ralph A. Brown, 68 F.R.D. 172 (1975), an order was entered to expunge the records of an individual "incorrect" commitment 14

Vickerman v. Hennepin County Court, et. al., 543 F. Sup. 165 (1981) 18

FEDERAL LAWS

IVX Amendment to the Constitution - Due Process . 1, 2, 18

5 U.S.C. 552(a) - Federal Data Privacy Act . . iii, 1, 2, 18, 19

28 U.S.C. 1961 - RICO, Federal Racketeering Act 1, 2, 16, 18

42 U.S.C. 1983 - Civil Action for Deprivation of Rights 1, 2, 11, 18

28 U.S.C. 2403 - Allows Intervention by the United States on Questions of Constitutionality 1, 18

28 U.S.C. 2513-Unjust Imprisonment 1, 2, 12, 18

STATE LAWS

Minn. Stat. 13.04 Minnesota Data Privacy Laws . . . . iii, 19

Minn. Stat. 176.82 subd.(1),(2) Obstructing an Employee from Receiving Workers' Compensation Benefits i

Minn. Stat. 176.151(3) Allows a 3-year extension after incapacity ceases, to file a workers' compensation claim . 11

Minn. Stat. 595.02(g) Data Privacy Violation Regarding Privileged Medical Documents iii

APPENDIX CONTENTS

Page

Minnesota Supreme Court order filed by **Associate Justice Sandra Gardebring** A-1

W.C.C.A Court Decision by **Chief Judge Thomas Johnson** filed December 10, 1996 ..... A-2

The Workers' Compensation Decision by initials J.M.C. dated 4/29/96 ..... A-20

Anoka Court Motion and Order to DISMISS June 17, 1985 - Civil Commitment proceedings signed by **Anoka County Prosecutor Janice Allen Wheat** A-32

PETITION FOR WRIT OF CERTIORARI

Petitioner Darlene C. Sammarco, disabled former 25 year employee of Ford Motor Company, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Minnesota entered in the above-entitled proceeding

II. OPINIONS BELOW

The opinion of the Supreme Court of Minnesota on March 31, 1997, upholds the decision of the Workers' Compensation Court of Appeals, filed December 10, 1996, affirmed without opinion, per Rules of Civil Appellate Procedure 136.01, subd 1(b). BY THE COURT: SANDRA GARDEBRING, Associate Justice, for Chief Justice A.M. Keith, Justice Paul Anderson, Justice Alan Page, Justice Edward Stringer, and Justice Esther Tomljanovich.

On December 10, 1996, Workers' Compensation Court of Appeals Chief Judge Thomas L. Johnson, upheld the Findings and Order of Compensation Judge Janice M. Culnane April 29, 1996, dismissal of the Petitioner's case.

III. JURISDICTION

Petitioner seeks relief under Rule 21 Writ of Certiorari, XIV Amendment to the United States Constitution, Due Process, and 42 U.S.C. Sect. 1983, civil action for deprivation of rights, 28 U.S.C. 1961 "racketeering activity" [RICO], 28 U.S.C. 2403 allowing intervention by United States on questions of constitutionality, 28 U.S.C. 2513, in the matter of unjust conviction and imprisonment, and 5 U.S.C. 552a Data

Privacy Laws.

IV. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution. Amendment XIV:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C.1961 RICO "Racketeering Activity" by the State of Minnesota, 28 U.S.C. 2513 allows federal intervention in matters of unconstitutionality, 5 U.S.C. 552 (a) Data Privacy, and 42 U.S.C. 1983 allows a civil action for deprivation of rights.

V. STATEMENT OF THE CASE

A. Factual Background

Petitioner suffered several injuries due to being employed by Ford Motor Company for 25 years. Two slip and fall back injuries in January 1961, and February 11, 1985, were due to heavily waxed floors in hallways at Ford Motor Company. Other injuries claimed were deliberately caused by Ford management in an attempt to get the Petitioner to quit her job. (ie.) requiring Petitioner to do heavy lifting in the Ford mailroom even after doctors advised the heavy lifting would worsen employee's back problems.

In May 1984, petitioner suffered a severe disabling head injury which was not job related. Employee has medical records showing the Petitioner was used for Insulin

experiments for a D&C in 1973 at a Eitel community hospital. Petitioner showed a Dr. David Dorn the Eitel records, and the neurologist who was treating the Petitioner for head injury, told the employee she had EPILEPSY and prescribed over-doses of Phenobarbital and Dilantin.

Employee had all excellent reviews for performance through all her years at Ford, and had just gotten a merit pay raise February 17, 1985, six days after the last slip and fall injury. It was difficult for employee to stay awake at work from the prescribed drug intoxication, so employee took vacation time from Ford. During that time, Dorn advised employee's family to commit the employee for inability to stay awake.

Employee changed health insurance to HMO-Minnesota on March 1, 1985, and no doctors were to treat the employee without a referral from her primary clinic. On March 7, 1985, Petitioner drove to Ford to ask employee representative Don Dobmeyer why Dr. Dorn's bills were not being paid, and was advised he needed a referral. As employee was leaving the building to see a drug counselor about the drug intoxication and what to do about it, the Petitioner was arrested and brought to Hennepin County General Hospital. The employee had over 30,000 mg of Dr. Dorn's prescribed drugs and a copy of a letter written to WALTER MONDALE concerning the use of people in drug experiments. Petitioner was transferred to Golden Valley Health Center and stripped of all rights. Seizures were induced with drugs and anti-convulsant drugs were given to counteract the induced seizures.

March 11, 1985, Dr. Murray Locke signed a Hennepin Court document stating Petitioner was a Paranoid Schizophrenic with Pseudo-Seizures, and at 2 p.m., two 72 hour Hennepin County hold expired. A third 72 hour Anoka court hold sign by Anoka County Judge GIBBS was served by Anoka sheriff's deputies at North Memorial Hospital, 3 1/2 hours after Hennepin County refused to prosecute. The Anoka County Court lacked jurisdiction in the case.

March 13, 1985 there was to have been a hospital transfer to Mercy Hospital, where employee was told a Dr. Tom Fox was going to fry her brains with electric shock. Mercy declined the transfer because there was no authorization for any of the doctors or hospitals from the primary clinic Fridley Medical Center. There were no physical or mental health evaluations or mental testing, and no court hearing, except for a March 14, 1985, hospital transfer back to Golden Valley Health Center. March 15, 1985, employee hired Attorney Bill Schmidt with $2,000.00 borrowed for a retainer. Schmidt talked about 20 minutes promising to get employee released over the weekend. March 18, 1985, employee sent a telegram cancelling any future representation.

That evening, a nurse injected the Petitioner with a drug that caused employee to fall from a hospital bed that had no siderails, during several hours of grand mal seizures. 24 hours later a doctor was called in to examine petitioner's back. Petitioner's front teeth were knocked out and three other teeth were fractured. Anoka Judge James Gibbs transferred employee to Anoka State Asylum for six days prior to what

was to be a court hearing March 26, 1985. After drug withdrawal seizures a few hours after arrival at the State Hospital, there were no more drugs and no seizures.

March 26, 1985, employee was brought to an Anoka courthouse conference room. A Barna, Guzy, Giancola public defender, Anoka prosecutor Janice Wheat Allen and Anoka court cult Psychologist James Gilbertson convinced petitioner that if she didn't tell Judge James Morrow she was mentally ill, she would be returned to Golden Valley and this time she would probably not survive. Judge Morrow stated in a brief exchange mostly between himself and the attorneys, that the employee would have to take prescribed drugs. Out of fear of being sent back to Golden Valley Health Center, the employee agreed to take the drugs. Seizures began immediately after drugs were given.

Two weeks into a 90 day hospitalization, the employee suffered near fatal grand mal seizures April 6, 1985. April 8, 1985, Psychiatrist Bruce Hiller, who was not involved in the fake commitment proceedings, told employee she was <u>not</u> mentally ill and would be more comfortable at home.

Neither the St. Mary's Hospital administrator nor Anoka Court personnel were advised of the release. Employee was not brought back to court. June 17, 1985, Prosecutor Janice Wheat [Allen] <u>dismissed</u> the commitment proceedings against the employee.

Since that time, employee has tried numerous times to get the false prescreening report expunged, but Judge James Morrow's wife, Anoka Court Administrator Jane Morrow,

stated that Minnesota law only allows expungement of criminal records. The pre-petition screening report which falsely states petitioner slept with a loaded shotgun under her bed, was smashing into vehicles and not reporting this, that employee had written a letter to Walter Mondale telling him about Minnesota medical experiments on unwitting patients and psuedo seizures. Petitioner states she has never owned a shotgun, has a perfect accident free driving record over 50 years, and the pseudoseizures were medically induced, and organic brain disorder [head injury] is a physical injury, not a not mental illness as described in Minnesota Civil Commitment Laws.

The Anoka pre-petition report was wrong on everything but the letter to Walter Mondale, which was stated in the Anoka report. These false Anoka records were included in all five hospitals medical records where employee was falsely imprisoned for 32 days and nights of torture. The fabricated hospital records and the Anoka phoney prescreening report were submitted to social security in hospital records that were requested by that federal agency.

Employee brought case No.4-86-433 to federal Judge James Rosenbaum to review the Anoka commitment proceedings to have them expunged, Magistrate Earl J. Cudd "lost" the tape of a hearing before him in August 1986 to amend the complaint. Rosenbaum found for defendant Anoka Court, and the doctors who had tortured the employee. Rosenbaum's Memorandum of Law falsely states that the employee "agreed" with Chief Federal Judge Alsop's son,

Atty. David Alsop, to allow North Memorial records into the federal court file, which included the false Anoka prescreening report. Employee brought an action before Hennepin County Judge Ann Montgomery to recover the $2,000.00 swindled by Atty. William Schmidt. Judge Montgomery found for swindler Schmidt.

Employee wrote a letter to Judges Rosenbaum, Earl Cudd, Montgomery, and Gibbs stating that some day they would also be judged. The F.B.I. was called in and the F.B.I. report stated employee was committed at Golden Valley Health Center, which was not true.

Bulged and ruptured disc in employee's back were misdiagnosed until February 1987, when major surgery was performed at Abbott Northwestern Hospital.

In December 1988, Judge James Gibbs assaulted employee without provocation and injured employee's head, knee and re-injured her back. The injuries were reported to Fridley police, who covered up the assault for the judge. Employee was seen by a doctor and treated by chiropractor Dr. Timothy McGraw for the assault injuries caused by Judge Gibbs.

This background history is included in this certiorari because the Workers' Compensation hearing April 10, 1996, before Judge Janice Culnane, contained surprise information regarding the 1986 lawsuits, judges, and fabricated D.R.S. documents that were accepted into the record without the employee having a chance to challenge the documents. Judicial error and Data Privacy violations.

As Ford counsel stated, Petitioner tried to get false information expunged from her Social Security file, but Minnesota Administrative Law Judge Frisch (advised in a letter) that he would not allow any corrections, expungements, or amendments to my social security file, since this employee was already receiving social security benefits.

Minnesota F.B.I. Director Jeff Jamar, was also not interested in making corrections to F.B.I. files on false accusations by Judge James Gibbs, Judge Earl Cudd, and Judge Ann Montgomery, alleging Petitioner was committed at Golden Valley Health Center, and that judges were threatened by a letter stating the judges would also be judged someday. The F.B.I. admitted there was no perceived threat.[Jamar was the F.B.I. agent in charge of the WACO massacre].

In January 1993, employee felt sufficiently recovered from the brain injury and Post Traumatic Stress Disorder to file a workers' compensation claim against Ford Motor Company.

Ford destroyed employee's personnel file which contained documents that were detrimental to Ford if they were included in the court record. Employee made copies of some of the records before Ford destroyed them. Medical records of employee were in the file, that showed Ford office manager (Gruidl) was involved in getting compensation for medical referrals.

The summer of 1993, employee sought funding from Department of Rehabilitation Services to attend college. D.R.S. Counselor Julian Sprunke was upset when the employee mentioned that Dr. Tom Fox, a D.R.S. psychiatric consultant

had been involved in the medical atrocities in March 13, 1985.

Petitioner advised Julian Sprunke that D.R.S. consultant Dr. Fox had murdered his patient Dorothy Hanson with Electric Shock in 1988, and the Anoka County Sheriffs Department covered up the death after which Counselor Sprunke and D.R.S. Consultant Psychologist Antonello fabricated a report to cover up for Dr. Fox. This information would be very detrimental to D.R.S. if it were ever made public. Sprunke and Antonello showed the phoney report to the petitioner and said that going to college would be a waste of government money. Employee asked that this D.R.S. false report be expunged from D.R.S. files, and Julian Sprunke assured that it would be. Employee paid for a year of college and reapplied through D.R.S. after getting A's and B's. An evaluation September 1993 by Psychologist Daniel Wiener found no sign of mental illness, and testing showed high intelligence. A year later, DRS Counselor Joyce Strand provided funding for employee to attend college and employee graduated with a "B" average Associate in Arts and Associate in Science Paralegal degrees.

When DRS Counselor Julian Sprunke brought what he said was the employee's entire file to the April 10, 1996, hearing, the petitioner was shocked to find that the only records Sprunke brought were the records he promised to destroy; later reports by D.R.S. Joyce Strand were not included in the false data given to Judge Culnane, at the insistence of Attorney General Skip Humphey's office.

Ford counsel also presented a medical consult report by

Dr. Rodger Kollmorgan, who was hired by Ford in 1986 to write the report. The psychiatrist wrote that the employee was prescribed numerous psychiatric drugs and seizure medications, but didn't feel it was necessary to state why the drugs were given. There were drugs (ie.) Haldol and Pertofrane listed that were never prescribed, and drugs ie., LSD and Insulin weren't on the list.

Prescribed drugs were alleged to have been prescribed for D&C, nervous colitis, medically induced grand mal seizures, job stress and head injuries in June 1963 and May 1984.

The W.C.C.A. order upholding the lower court dismissal has many false statements ie., Petitioner was alleged to have been hospitalized in facilities from 1968 to 1985. Petitioner was hospitalized ONCE during that time. In 1977, petitioner had HEMORRHOID SURGERY at Unity Hospital because of heavy lifting on the job at Ford. The libelous reports of Dr. Antonello and Dr. Kollmorgan were included into the records by Judge Culnane against the objections of the employee, and then included in the order by W.C.C.A. Appellate Chief Judge Thomas Johnson.

February 16, 1996, petitioner had three epidural injections for severe back, hip, leg pain, which injuries were the result of employee having fallen at the job site and from having to do heavy lifting on the job against medical advice. Petitioner will probably need additional major surgery resulting from the job caused injuries.

B. Procedural background

Not one of the four questions by Petitioner were answered in substance by the Compensation judge or W.C.C.A. Chief Judge Thomas Johnson, or Minnesota Supreme Court Chief Justice Sandy A.M. Keith, and the six remaining justices who offered "NO OPINION". Rule of Civil Appellate Procedure 136.01 subd 1(b), states, "A statement of the decision without a written opinion shall not be officially published and shall not be cited as precedent."

Minn. Stat. 176.151(3) allows an employee's claim three years after incapacity ceases. Petitioner continues to be incapacitated according to state and federal documents.

There are numerous false assumptions by Ford's counsel and the Minnesota court judges, which would not uphold the decision to dismiss the claim.

VI. REASONS FOR GRANTING THIS WRIT

The Minnesota courts have failed to abide by the United States Constitution, Minnesota laws, and procedural rules.

A. Certiorari should be granted on the issue of Due Process.

The United States Supreme Court has jurisdiction by the XIV Amendment which gives citizens the Right to Due Process, and of 42 U.S.C. 1983 which states:

> "Every person who, under color of any statute. . .of any State. . .subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the [U.S.]

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

B. Certiorari should be granted on the issue that federal law allows for redress and remedy. 28 U.S.C. 2513.

"Any person suing under section 1495 of this title must allege and prove that:

1. "H[er] conviction has been reversed or set aside [dismissed] on the ground that [s]he is not guilty of the offenses. . ." Commitment proceedings were dismissed June 17, 1985, with no further action."

There were procedural errors in the 1985 Anoka County Court commitment proceedings:

(1) Affidavit in support of commitment was insufficient, as it contained heresay statements by neurologist Dr. Dorn, who requested the commitment.

(2) Petitioner was held on three consecutive 72 hour holds by two counties [Hennepin and Anoka].

(3) No evidence exists that petitioner received a preliminary medical examination required by statute.

(4) Petitioner was held 19 days at four different hospitals before being coerced into pleading guilty to mental illness by Anoka County public defender, Anoka prosecutor, and Anoka court psychologist.

(8) Petitioner was afforded ineffective assistance of counsel, because the public defender concurred in an unwarranted 90 day sentence hospitalization, even

though counsel was told the accusations were false.

(9) Commitment proceedings were tainted, since the hearing was held before Anoka prosecutor, public defender and court psychologist instead of a judge.

2. "S[he] did not commit any of the acts charged or acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State . . .and [s]he did not by h[er] misconduct or neglect cause or bring about h[er] own prosecution." In reference to the charges in Anoka pre-petition screening report, #1-petitioner has never owned a shotgun, and therefore could not have sleeping with a loaded shot gun one under a mattress, #2-petitioner is driving the same '83 Ford TBird after 14 years with no damage and no repair bills for the front of the car, so driving around smashing into cars and not reporting it was also a false charge, #3-having a seizure disorder has been proven to be medically induced when petitioner was hospitalized by the court in 1985, and #4-having written a letter to Attorney Walter Mondale about health care is not an indication of mental illness.

In Anderson v. U. S. Veterans Hospital, 128 N.W. 2d 710 (1965) the Supreme Court of Minnesota held in Writ of Habeas Corpus that Dr. Anderson be restored to capacity and released from custody. Then Attorney General Walter Mondale and Special Asst. Earl J. Cudd, tried to keep the man locked up. A guardian ad litem was appointed to file a petition for restoration in probate court to obtain a determination whether the committed doctor should be restored to capacity and whether the order of commitment had been properly issued.

The doctor was granted a Writ of Habeas Corpus and then Atty. General WALTER MONDALE (also former vice president) and Special Asst. Atty. Gen. EARL J. CUDD were on the losing side. The Civil Commitment laws were made even tighter and the restoration to capacity law was repealed to keep people locked up. Cudd is the federal magistrate who destroyed federal records of a hearing August 1986 to amend petitioner's Pro Se case against Anoka Court.

C. Certiorari should be granted on the issue that petitioner has exhausted all recourse to the courts and the time for any court to exercise its jurisdiction has expired.

Minnesota law doesn't allow remedy, redress, or expungement of civil commitment proceedings or records and given the negative federal and state decisions involving the aftermath of the illegal commitment proceedings, justice would be better served if the records and dismissed proceedings against Petitioner were destroyed and expunged from all state and federal records.

In the Matter of Ralph A. Brown, 68 F.R.D. 172 (1975), the United States District Court, District of Columbia found in favor of Ralph Brown Stating, "The equitites favor petitioner in this case. . .[considering he consented to his commitment], he was given ineffective assistance of counsel, and that he probably was having some difficulty coping with his situation, such a willingness is not surprising. . .To release him now from the stigma of a 15-year old, procedurally incorrect commitment would be in complete conformance with the ends and

requirements of justice." An order was entered consistent with this opinion.

Though a Writ of Habeas Corpus is allowed in Civil Commitment laws, Minnesota Supreme Court Chief Justice A.M. Keith, and Federal Judge Diana Murphy refused to issue a Writ of Habeas Corpus filed by petitioner for her daughter Joanne Riebel to be released from Anoka court false commitment to Brainerd State Hospital. The court decided that since Anoka court alleged petitioner was mentally ill then her daughter and grandson must be mentally ill. Joanne was required to serve 20 months based on perjured testimony that according to the Anoka transcripts, the judges knew were false.

The 1985 false libelous commitment proceedings against petitioner by Anoka judges resulted not only in false commitment of petitioner's daughter Joanne Riebel, but in hundreds of thousands of dollars in private insurance fraud, medical assistance fraud, social security fraud and most tragic of all, the wrongful death of petitioner's grandson Jona Riebel from allergic reactions to clozaril and amoxicilin.

D. Certiorari should be granted on the issue that there is bias against petitioner at all levels of Minnesota government:

1) At all court levels as referenced in this writ; ie., Federal 8th Circuit Court Judge Diana Murphy, Minnesota Federal District Court Ann Montgomery, Earl Cudd, James Rosenbaum, Minnesota Supreme Court Chief Judge A.M. Keith, Sandra Gardebring, Appeals Court Judge Thomas Johnson, Anoka Judge James Gibbs, James Morrow, Gabe

Giancola, Stephen Askew, and Steven Muellenberg.

2) Minnesota Attorney General's Office-Attorney Paul Kampainen stated that the AGO would need 17 more attorneys to prosecute persons who bring false civil commitments against individuals in Minnesota.

3) Legislators - Dealing in RICO, transporting alleged mental patients across state lines for financial gain, is big business. Out of state judges are solicited for referral fees to send their civilly committed patients to Minnesota, as noted by a television program 20/20 in 1987, and to exchange less damaged "patients" for Minnesota's more "medically induced drug disabled patients" (ie.) Ohio and Florida. Both Hennepin and Ramsey County Medical Examiners have covered-up drug deaths and murders of alleged mental patients. Minnesota multi-term Senator Don Samuelson, DFL-Brainerd speaking on the closing of Minnesota's State Asylums stated, "Any shutdown decision ultimately will depend on whose ox gets gored. . .I'd jump off the bridge first. . .then he would retaliate against the author's district." "In 1988 the state hospitals employed 6,300 people and costed nearly $203 million a year, including state, federal and other funds." Newland, Sam, State Hospitals: At a crossroads, Minneapolis Star and Tribune, February 28, 1988, 1B, 7B.

Minnesota goverment has routinely engaged in RICO, "Racketing Activity" as defined in 28 U.S.C. 1961, under color of Minnesota Civil Commitment Laws; wherein citizens are kidnapped, drugged, tortured and their minds are manipulated to obtain illegal commitments, and then the persons are used as

guinea pigs for medical research and drug experiments. Legislators admitted to using people for involuntary commitments, medical experiments, and deaths of mentally retarded persons for over a century in Minnesota. Conrad de Flebre, A time for atonement? Star Tribune, February 8, 1996, 1B.

4) Minnesota Supreme Court by Sandra Gardebring, refuses employee's claim for workers' compensation. In 1988, Health and Human Services Commissioner Sandra Gardebring* negotiated a deal to fill up state hospitals. Gardebring was appointed Appellate Court judge by then Governor Perpich for filling the state hospitals and in helping settling a lawsuit against Cambridge State Hospital by families of retarded persons. Newland, State Hospitals: At a crossroads, Minneapolis Star and Tribune, February 28, 1988, 7B.*

5) TASK FORCE- A Civil Commitment Task Force to make civil commitments even easier was court ordered by the Minnesota Supreme Court in 1994. 1996 Report to the Governor and Legislature, "Civil Commitment Reform", 1996, 16. The 1997 laws, were formulated by Supreme Court Associate Justice Sandra Gardebring who chairs the task force and a majority of the remaining panel members are State Hospital directors, legislators, commitment judges, health providers, attorneys, law enforcement officers, state and county mental health staff, Prosecutor Janice Wheat Allen and Anoka Judge James Gibbs. [Judge Gibbs assaulted and injured employee in 1988 without provocation, which is mentioned in

the Workers' Compensation Claim as Gillette injuries stemming from the Ford job related injuries.] See Vickerman v. Hennepin County 543 F. Sup. 165 (1981). Out of state patients being held at Golden Valley Health Center sued Hennepin County Court and Commissioners, which resulted in 1982 Civil Commitment laws that were no better.

6) Commissioner Jane Brown, Department of Economic Security, refuses to allow expungement of Department of Rehabilitation fabricated records of Counselor Antonello and Julian Sprunke.

E. Certiorari should be granted on the issue that 28 U.S.C.2403 allows intervention by United States concerning constitutionality when any Act of Congress affecting the public interest is in question.

The F.B.I., Social Security Administration, state and federal courts and agencies ie., DRS, have refused to allow expungement or corrections of false data in the files, and other violations of federal laws as previously stated. Employee has been denied the right to legal remedy and redress in Minnesota federal and state courts and thus the Petitioner is relying on the Certiorari for remedy and redress.

The court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality: IVX Amendment to the Constitution, 5 U.S.C. 552(a) Data Privacy Act, 28 U.S.C. 1961 Federal Racketeering Act, 42 U.S.C. 1983 Deprivation of Rights, 28 U.S.C. 2403 Allows

Federal Intervention for Violations of Constitutional Law, 28 U.S.C. 2513 Unjust Imprisonment.

CONCLUSION

Petitioner has been living free since 1985 and is the sole provider of care for her disabled 42 year daughter and 90 year old mother.

To release this petitioner from the stigma of the 12 year-old, procedurally incorrect commitment [proceedings] would be in complete conformance with the ends and requirements of justice as noted below.

Ford files, John Hancock, Social Security, and all state and federal files where Anoka Court has sent the false illegal commitment proceedings that were dismissed June 17, 1985, claim the petitioner is disabled and assumed incapacitated. Though the petitioner believes herself to be incapacitated, the problem is not one of mental illness.

WHEREFORE, petitioner requests the United States Supreme Court to issue a Writ of Certiorari ordering the Minnesota Supreme Court to set aside and expunge the false Anoka County records of March 7 to April 8, 1985, and to destroy these defamatory documents and all references to the documents where they have been dispersed in state and federal files, in the interest of justice and in accordance with the State and Federal Data Privacy laws, 5 U.S.C. 552(a), and Minn. Stat. 13.04.

Petitioner further requests the court grant to said petitioner back pay of over $100,000.00 owed in workers' compensation for permanent disability suffered as a result of on

the job injuries at Ford Motor, and future monthly compensation awards, and other redress to be determined by the court, in accordance with state and federal laws.

Dated: April 24, 1997

Respectfully Submitted by

Darlene C. Sammarco, Pro Se
Pro Se Paralegal
1307 52nd Ave. N.E.
Fridley, MN. 55421-1820
(612) 571-5984

STATE OF MINNESOTA
IN SUPREME COURT
C9-97-7 1

Office of
Appellate Court
Mar 31 1997
FILED

Darlene C. Sammarco,
Relator,

vs.

Ford Motor Company, Self-Insured,
Respondent.

Considered and decided by the court en banc.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the decision of the Workers' Compensation Court of Appeals, filed December 10, 1996, be, and the same is, affirmed without opinion. *See* Minnesota Rules of Civil Appellate Procedure 136.01, subdivision 1(b).

Dated:
3/31/97

BY THE COURT:

/s/
Associate Justice

STATE OF MINNESOTA
WORKERS' COMPENSATION COURT OF APPEALS
File No. 473-32-1473

SERVED & FILED
DEC 10 1996
WORKERS' COMPENSATION
COURT OF APPEALS

Darlene C. Sammarco, Pro se
Appellant,

vs.

Ford Motor Company,
Self-Insured,
Respondent.

Gilmore, Aafedt, Forde,
Anderson & Gray
Kathryn M. Hipp
150 South Fifth Street, Suite
3100
Minneapolis, Minnesota 55402

The employee's appeal, filed May 21, 1996, from the Findings and Order of Compensation Judge Janice M. Culnane, served and filed April 29, 1996, came on for hearing on November 25, 1996, pursuant to due notice, before Thomas L. Johnson, R. V. (Sally) Olsen, and Richard C. Hefte, Judges of the Workers' Compensation Court of Appeals.

Based on all of the pleadings in the case, the transcript of evidence taken before the compensation judge, the exhibits admitted into evidence, briefs and arguments of the parties, and all of the files, records, and proceedings herein, the court concludes that the Findings and Order of the compensation judge

is in accord with the evidence and law in the case.

NOW, THEREFORE, this court AFFIRMS the Findings and Order of Compensation Judge Janice M. Culnane, served and filed April 29, 1996.

BY THE COURT:

/s/
THOMAS L. JOHNSON, Judge

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's determination that she failed to file her claim for workers' compensation benefits within the statutory time period and the consequent dismissal of her claim petition. We affirm the Findings and Order of the compensation judge.

BACKGROUND

The employee, Darlene Sammarco, worked for the self-insured employer, Ford Motor Company, from approximately 1960 until 1985. During this twenty-five-year period, she performed office clerical work, including work in the mail room. Because the sole issue litigated at hearing concerned the statute of limitations, the exhibits and testimony presented provide only a sketchy history. The evidence focuses on two

areas: (1) the employee's back condition and (2) mental health issues.

The origin and progression of the employee's back condition is unclear. In approximately October 1980 she was diagnosed with degenerative arthritis of the cervical spine. (Ex. I.) In April 1981 a doctor advised that heavy lifting could worsen her condition (Ex. J), and in early 1983 the employee apparently had increased back pain with radiation into both legs. (Ex. K.) The employee saw Dr. Bowar at the Sister Kenny Institute on July 13, 1984, when she reported that a doctor at the University of Minnesota had diagnosed arthritis in her back, right shoulder and right elbow in September 1981, and that she had fallen from a ladder on her roof at home in late May 1984, spraining her ankle. (Ex. M.) She also slipped and fell at work on February 11, 1985, sustaining "no apparent injury." (Ex. G, Incident Report.) Diagnostic testing on March 20, 1985, revealed marked interspace narrowing at L4-5 and minimal to moderate narrowing at L3-4. (Ex. N.) In claims for disability benefits submitted to Ford's disability carrier, John Hancock, the employee stated that she was disabled from March 7, 1985, due to a fall from her roof. (Ex. 2, applications dated 4/2/85, 4/24/85 and 9/6/85.) The employee subsequently had back surgery on approximately February 19 or 20, 1987. (Ex. 2, Certificate of Continuous Disability dated 3/6/87.) At that time she reported that the surgery was necessitated by a back injury sustained on March 18, 1985, when she had a seizure while hospitalized at Golden Valley Health Center. (Id.) In May 1993 the employee applied for vocational rehabilitation

services. She reported a back injury due to a slip and fall at Ford in 1961 followed by intermittent back problems until she sustained a severe injury while hospitalized in March 1985, leading to surgery for a herniated disc in 1987. (Ex. T, application dated 5/20/93.)

The origin and nature of the employee's mental health problems is also unclear. The employee appears to allege that she sustained an organic brain injury when she fell from the ladder in May 1984, and that she suffered drug-induced seizures as a result of the mismanagement of her treatment during a hospitalization in 1985. However, there is evidence in the record that she underwent electroshock treatment in 1968 (Tr. of 2/20/96 pretrial at 35-36; Tr. at 94) and 1963 (Tr. of 2/20/96 pretrial at 42-43), and may have been admitted to one or more facilities between 1968 and 1985. (Ex. T, 6/21/93 report of Stephen Antonello, Ph.D.) It is undisputed that the employee was a patient at several facilities from March 7 until April 8, 1985, although there is conflicting evidence regarding the cause of this month-long hospitalization. The employee alleges that it was a "forced hospitalization," perhaps due, at least initially, to her claimed brain injury. The medical records indicate that she was suffering from paranoid schizophrenia or a characterological disorder, possibly with hysteria and depression. (Ex. B; Ex. C; Ex. T, 6/21/93 report of Stephen Antonello, Ph.D.; Ex. 5.) The employee has not worked since early 1985, and was terminated or laid off on August 16, 1985. She receives social security disability, long term disability from John Hancock, and has a medical retirement pension.

On January 28, 1993, the employee filed a claim petition alleging a back injury in 1961. At a settlement conference on August 31, 1993, Ford moved to dismiss the employee's claim on the ground that it was barred by the statute of limitations. In an order served and filed February 16, 1994, a settlement judge determined that an evidentiary hearing on the motion was required and referred the matter to the Office of Administrative Hearings. Pursuant to the employee's request, the matter was stricken from the active trial calendar while discovery was conducted and documents gathered. In a motion filed April 11, 1995, the employee requested that the matter be set for hearing. At a hearing on the employee's motion on July 24, 1995, it became apparent that the employee was alleging multiple injuries. The motion was therefore denied and the matter continued to be stricken from the trial calendar, subject to reinstatement when the employee clarified the date and nature of all the injuries claimed. (Judgment Roll, Order of August 7, 1995.)

The employee's claim petition was subsequently amended to allege seven different injuries occurring between 1961 and 1985: (1) a back injury due to a slip and fall in January 1961; (2) job stress and depression in August 1968; (3) nervous colitis in 1972; (4) back problems from 1972 - 1979; (5) repetitive motion injuries of the neck and right arm in April 1981; (6) a back and hip injury due to a slip and fall on Febru-

ary 11, 1985; and (7) posttraumatic stress and depression on August 16, 1985.[1] The self-insured employer again moved to dismiss the claim on statute of limitations grounds. After a pretrial, an evidentiary hearing regarding the motion to dismiss was held before Compensation Judge Janice M. Culnane on April 10, 1996. In Findings and Order served and filed April 29, 1996, the compensation judge found that the employee failed to file her claim petition within the six-year statute of limitations prescribed by Minn. Stat. § 176.151, and dismissed the claim. The employee appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably

---

[1]The employee prepared an amended claim dated August 11, 1985, alleging 8 injuries Pursuant to Judge Culnane's request for further clarification, a second amended claim was filed on October 23, 1995. Ford filed an "Answer to Employee's Second Amended Claim Petition" on November 1, 1995. At hearing, two of the eight claimed injuries were combined, and the seven injuries listed above were agreed to be at issue.

be drawn from the evidence, the findings are to be affirmed. Id At 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. V. Lyon Food Prods. Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

DECISION

The employee argues that the compensation judge erred when she found the employee's claim for benefits barred by the six-year statute of limitations. She contends also that, because she was handling this entire matter *pro se*, she should have been advised of her right to seek assistance and legal advice from the Department of Labor and Industry.[2] Finally, the employee asserts that the compensation judge made several errors regarding the admission of evidence and the taking of testimony, and that she committed various errors prejudicial to the employee. The employee requests that this matter be remanded for a new hearing before a different compensation

---

[2]Minn. Stat. § 176.261 provides that an employee may receive advice and assistance from employees of the workers' compensation division of DOLI, including representation in workers' compensation proceedings and referral to an attorney if outside assistance is needed.

judge.

Statute of Limitations

An action by an employee to determine or recover workers' compensation benefits must be brought within "three years after the employer has made written report of the injury to the commissioner of the department of labor and industry, but not to exceed six years from the date of the accident." Minn. Stat. § 176.151(1). The rationale for this limitation has been well-stated:

> [P]ublic policy requires reasonable diligence in bringing litigation to a close . . . . Since witnesses die or disappear and memories fade, trial of actions should never be negligently and unreasonably delayed.

DeMars v. Robinson King Floors, Inc., 256 N.W.2d 501, 504, 30 W.C.D. 109, 114 (Minn. 1977). What may constitute a "reasonable" statute of limitations "depends upon the sound discretion of the legislature in the light of the nature of the subject and the purpose" of the law to which the limitation applies, and "[n]either the courts nor administrative agencies... possess the authority to extend or to modify the period of limitation prescribed by statute." Id. at 505, 30 W.C.D. at 115.

We note first, as a preliminary matter, that this case concerns compliance with the limitation period applicable to the initiation of an action or proceeding to recover workers' compensation benefits, as set out in Minn. Stat. § 176.151. Different limitations apply with regard to providing notice to the employer that an injury has occurred. See Minn. Stat. §

176.141. For the policy reasons cited above, an employee must bring his or her claim - i.e., initiate an action to recover benefits - within the statutory time limits, and failure to do so may result in dismissal of the employee's claim even if the employer had timely and sufficient notice of the alleged injury. Thus, the compensation judge correctly determined that findings on the issue of notice were not necessary to a determination of whether the employee had failed to bring her claim within the statutory time period for initiating a proceeding to recover benefits. (See Findings and Order, Memorandum at 6.)

It is undisputed that Ford did not file a First Report of Injury regarding any of the seven injuries alleged by the employee. Thus, the applicable statute of limitations in this matter is six years from the date of the relevant accident. Minn. Stat. § 176.151(1). Because the most recent injury claimed by the employee is alleged to have occurred on August 16, 1985, the employee was required to bring her claim no later than August 16, 1991. The claim petition filed on January 28, 1993, was clearly outside of the statute of limitations.[3] However, the statute of limitations may be tolled in certain circumstances.

First, the statute of limitations is tolled indefinitely if the employer and insurer voluntarily pay workers' compensation benefits to or on behalf of the employee following a work injury. Livgard v. Cornelius Co., 308 Minn. 467, 243 N.W.2d 309, 28 W.C.D. 413 (1976). The parties agree that

---

[3]The employee agreed that she brought no claim for workers' compensation benefits before January 28, 1994. (Tr. of 2/20/96 pretrial at 75; Tr. at 8-9).

Ford did not voluntarily pay workers' compensation benefits to or on behalf of the employee following any of the seven claimed injuries. (See Tr. at 92-93, 200 (employee); Tr. at 157-58 (witness for self-insured employer).) The employee does argue, however, that benefits paid for an admitted left hand injury in 1984 constitute a "proceeding" tolling the statute of limitations with regard to her claimed repetitive motion injury in April 1981. She reasons that the claimed injury to her right arm in 1981 caused her to over-use her non-dominant left arm and hand, leading to her compensable left hand injury in 1984. In other words, the employee appears to argue that the compensable 1984 injury was a consequence of the earlier claimed repetitive motion injury, and that the compensation paid for the 1984 injury somehow relates back to the 1981 alleged injury for purposes of the statute of limitations. We do not agree. An employer and insurer may be liable "for every natural consequence that flows from" a compensable injury. Nelson v. American Lutheran Church, 420 N.W.2d 588, 590, 40 W.C.D. 849, 851 (Minn. 1988) (emphasis added). An earlier injury, however, cannot be deemed a "consequential injury" of a later compensable injury. The self-insured employer's admission of liability and payment of benefits for the 1984 injury does not toll the statute of limitations with regard to the claimed 1981 injury. This exception to the six-year limitation period is therefore not applicable in this case.

Second, the statute will be tolled when medical and/or disability payments have been made and accepted with the intention that those benefits be in lieu of workers' com-

pensation benefits. Weidemann v. Kemper Ins. Group, 312 Minn. 157, 251 N.W.2d 117, 29 W.C.D. 376 (1976). See also Savina v. Litton Indus., 330 N.W.2d 456, 35 W.C.D. 659 (Minn. 1983); Marty v. Pacesetter Products, 54 W.C.D. 212 (W.C.C.A. 1996). Absent the requisite intent, the fact that an employee receives medical or disability benefits following an injury does not automatically toll the statute of limitations. Marty, 54 W.C.D. at 215. See also Neuberger v. Hennepin County Workhouse, 340 N.W.2d 330, 36 W.C.D. 348 (Minn. 1983). Lisa Toso, the workers' compensation administrator for Ford, testified that, in non-workers' compensation cases, medical benefits were paid by Ford's health plan with Blue Cross/Blue Shield, and disability payments were made by John Hancock. (Tr. at 159-60.) It is undisputed that the employee had medical bills paid by Blue Cross/Blue Shield and has received long-term disability benefits from John Hancock since 1985. (Tr. of 2/20/96 pretrial at 8, 12-13.) However, Ms. Toso testified that no benefits were paid to the employee by either of these insurers in lieu of workers' compensation benefits. (Tr. at 161, 165.) Moreover, at hearing the employee testified as follows:

> THE JUDGE: Is there any time when Ford said to you, yes, we know this is a Work Comp injury but rather than fool around with Work Comp just have your health insurance pay for it?
>
> MS. SAMMARCO: No. They never said that.

(Tr. at 21.) This evidence is sufficient to support the compensation judge's finding that no benefits were paid to the em-

ployee in lieu of workers' compensation benefits (Finding 7). This exception to the six-year statute of limitations is therefore not applicable.

Third, the employee argues that the alleged slip and fall in February 1985 was a "trivial injury" and that the time for filing her claim should run, not from the date of the fall in 1985, but from the date when it became apparent that the injury had or was likely to result in compensable disability.[4] The employee claims that this did not occur until she underwent back surgery on February 20, 1987, and that her claim petition, filed on January 28, 1993, was timely filed within six years of that date. However, the employee's January 1993 claim petition alleged only a 1961 back injury. She did not file a claim regarding the alleged February 1985 slip and fall until she amended her claim in August 1995. Even were we to assume that the statute of limitations on the employee's claim for the February 1985 injury did not begin to run until the surgery in 1987, she initiated no action to recover benefits for this injury until 1995. This is well beyond the statutory six years established in § 176.151(1).

Fourth, the employee alleges that Ford had actual notice of her alleged injuries, and that this notice tolled the statute of limitations. While it is true that an employer's actual notice of injury is sufficient to establish timely notice under

---

[4]See Lofgren v. Pieper Farms, 540 N.W.2d 834, 837, 53 W.C.D. 464, 466 (Minn. 1995) (stating that a trivial injury may toll the statute of limitations until such time as the seriousness and probable compensability of the injury becomes reasonably apparent).

Minn. Stat. § 176.141, neither statute nor case law provides that actual notice of an injury tolls the statute of limitations for commencing an action set out in Minn. Stat. § 176. 151(1).[5] Whether Ford had actual knowledge of the employee's injuries is not relevant to a determination of whether the employee complied with the statute of limitations in Minn. Stat. § 176.151.

Finally, the statute of limitations will be tolled during an employee's physical or mental incapacity, then extended for an additional three years from the date that the incapacity ceases. Minn. Stat. § 176.151(3). For this exception to apply, the employee's incapacity must render her unable "to perform or cause to be performed any act required within the time specified in this section." Id. The employee argues that the compensation judge erred in finding that the statute of limitations was not tolled on the basis of incapacity, alleging that she was mentally incapacitated from March 1985 until 1993.[6]

The parties agree that the term "mental incapacity" is not defined in the statute or in case law. Counsel for Ford sug-

---

[5]The employee cited numerous "workers' compensation rules" in support of her various arguments, including rules 12.08(e), (g) and (h) in support of her argument that an employer's actual knowledge of an injury tolls the statute of limitations. At hearing, neither the compensation judge nor counsel for Ford were aware of the source of these rules, and the employee was unable to tell the judge where she had found them. This court is unaware of any past or present Minnesota workers' compensation rules numbered in this manner.

[6]Although the compensation judge found that the employee was neither mentally nor physically incapacitated such that the statue of limitations would be tolled, the employee's brief addresses only the issue of mental incapacity.

gested that the definition of "mentally ill person" found in the Civil Commitment Act, Minn. Stat. Ch. 253B, be used as a guideline, and provided the compensation judge with a copy of that section of the statute. The employee objects, arguing that this court should now define the term "mental incapacity" for the purposes of workers' compensation proceedings. We decline to do so, and conclude that the compensation judge engaged in a thorough and reasonable analysis of the facts that amply supports the finding that the statute of limitations in this case was not tolled by the employee's mental incapacity.

The focus of Minn. Stat. § 176.151(3) is the employee's ability "to perform or cause to be performed any act required within the time specified." By its very language, the statute requires a functional rather than a diagnostic approach to the question of an employee's incapacity, be it mental or physical. Here, although the employee clearly suffered from both physical and mental difficulties through the years, it is clear that she was not "incapacitated" to the degree or for the length of time required to toll the statute of limitations.

During the period of claimed incapacity, the employee lived independently in her own home with her elderly mother. She drove a car, did her own shopping and homemaking, paid bills, went to the post office, and provided the necessary information to an accountant who prepared her tax returns. (Tr. at 146-52.) She voted and ran her own small business. (Tr. at 201, 193.) She agreed that she had always been able to provide for her own food, clothing, shelter and medical care. (Tr. at 188.) Although she was hospitalized for approximately one

month in the spring of 1985 and for her back surgery in 1987, she has not been bedridden or required a cane, walker or wheelchair. (Tr. at 185-86, 190, 192.) She does not have a seizure disorder (Ex. E) and has not been comatose or suffered from drug or alcohol intoxication. (Tr. at 190, 192.) She has never had a guardian or conservator, but has always handled her own personal and business affairs. (Tr. at 186.) The employee filed several claims for disability benefits from John Hancock between April 1985 and March 1987, the first while hospitalized at St. Mary's for mental health reasons. (Ex. 2; Tr. at 180-82.) As a *pro se* litigant she filed a federal lawsuit against fifteen defendants in May 1986 and pursued the matter through an appeal to the Eighth Circuit Court of Appeals. (Ex. 3; Tr. at 169-72.) She also consulted with or retained at least three or four attorneys and later filed suit against attorney William Schmidt and handwriting expert Ann Hooten. (Ex. 4; Tr. at 172-75, 184) She successfully applied for social security disability benefits (Tr. at 179), and, in 1990, initiated an action against the Anoka County Department of Human Services and an action under the Federal Tort Claims Act against the Social Security Administration. (Tr. at 177-78.) These facts and circumstances reasonably support the compensation judge's finding that the employee was not incapacitated and unable to file or direct the filing of a claim petition on her behalf within the statutory time period.

Compare Kahn v. State of Minnesota, University of Minnesota, 289. N.W.2d 737, 32 W.C.D. 351 (Minn. 1980) (paralysis from the neck down and inability to communicate for

approximately five months sufficient to toll the 90-day period within which the employee was required to give notice of her injury pursuant to Minn. Stat. § 176.141(1971)).

Other Issues

We find no merit to the employee's claim that she ought to have been advised that assistance was available to her through the Department of Labor and Industry pursuant to Minn. Stat. § 176.261. Such assistance may be provided "[w]hen requested by an employer or an employee or an employee's dependent." The employee apparently did not request such assistance, and she was aware that she had a right to be represented by counsel rather than proceeding *pro se.* (Tr. at 5.) We are aware of no statute or rule that places upon a compensation judge the affirmative obligation to acquaint an employee with the services available to her through the Department of Labor and Industry.

Similarly, our review of the record reveals no error on the part of the compensation judge in either the admission or exclusion of evidence. A definition of "mentally ill" from the Minnesota Civil Commitment Act, Minn. Stat. Ch. 253B, was provided by Ford's counsel. However, this definition was neither admitted into evidence nor referred to by the compensation judge in her analysis of the question of mental incapacity. Further, although a psychiatric evaluation performed in October 1985 by Dr. Rodger Kollmorgen on behalf of Ford was admitted into evidence over the employee's objection, we find no error in the admission of that report. The compensation

judge informed the employee that her objections regarding the accuracy of the report went to the weight of the evidence rather than to its admissibility, and the employee was given ample opportunity to testify about the alleged inaccuracies. Moreover, the compensation judge's order and memorandum do not mention Dr. Kollmorgen's report and do not appear to rely upon it in any way.

Finally, although the compensation judge did at times halt or interrupt the employee's testimony, this conduct was not improper. A compensation judge may make an independent investigation of the facts alleged during a hearing. Minn. Stat. § 176.391, subd. 1. Such an investigation must be conducted "in a manner to ascertain the substantial rights of the parties," Minn. Stat. § 176.411, subd. 1. It is evident from the transcript that the compensation judge's questioning and interruptions served to focus or clarify the employee's testimony, obtain relevant testimony, and insure that the hearing focused on the relevant issues. (See. e.g., Tr. at 82-85, 93-95, 107-09, 246-50.) We find no error in the conduct of the compensation judge.

TLJ:mh

CASE SUMMARY

TITLE OF CASE:

DARLENE C. SAMMARCO, Employee/Appellant, vs. FORD MOTOR COMPANY/SELF-INSURED, Self-Insured Employer.

HEADNOTES:

PRACTICE & PROCEDURE - STATUTE OF LIMITATIONS. The compensation judge's determination that the employee failed to file her claim within the six-year period prescribed by Minn. Stat. § 176.151(1) and that no circumstances or events existed which would toll the statute of limitations in this matter is supported by substantial evidence and not clearly erroneous.

DISPOSITION:

Affirmed.

DETERMINED BY:

Johnson, J., Hefte, J., and Olsen, J.

COMPENSATION JUDGE:

Janice M. Culnane

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
WORKERS' COMPENSATION SECTION
100 WASHINGTON SQUARE
SUITE 1700
MINNEAPOLIS, MINNESOTA 55401

File No. 473-32-1473
Darlene C. Sammarco,
Employee,
vs.
Ford Motor Company,
Employer.
and
Self-Insured,
Insurer.

Served & Filed
Apr 29 1996
Office of Administrative Hearings

FINDINGS AND ORDER

The above-entitled matter came on for hearing, pursuant to notice, before Janice M. Culnane, a Compensation Judge of the Office of Administrative Hearings on April 10, 1996, at Minneapolis.

Darlene C. Sammarco, 1307 - 52nd Avenue Northeast, Minneapolis, Minnesota 55421, appeared *pro se*. Kathryn M. Hipp, Attorney at Law, Suite 3100, 150 South Fifth Street, Minneapolis, Minnesota 55402, appeared on behalf of the self-insured employer.

The record in this matter closed on April 10, 1996, at the conclusion of the hearing.

Notice is hereby given that any person aggrieved by the decision herein may appeal the decision, or any portion thereof, to the Workers' Compensation Court of Appeals. An appeal must be filed with the Chief Administrative Law Judge no later than 30 days following service of this order; it must contain the information required by Minn. Stat. § 176.421; and must be accompanied by the $25.00 fee required by Minn. Stat. § 176.421, subd. 4.

STATEMENT OF ISSUES

Whether the statute of limitations expired prior to the employee's filing of her Claim Petition?

Based upon all of the files, records, and proceedings herein, the Compensation Judge makes the following:

FINDINGS

1. Darlene C. Sammarco, hereinafter the employee, filed a Claim Petition claiming entitlement to workers' compensation benefits on January 28, 1993.

2. In the Claim Petition filed on January 28, 1993, the employee claimed the date of injury was 1961 to the present.

3. Ford Motor Company, the self-insured employer, named in the employee's Claim Petition, filed a motion for dismissal dated August 30, 1993, based on the running of the statute of limitations pursuant to Minn. Stat. § 176.151.

4. The employee was terminated or laid off from Ford Motor Company on or about August 16, 1985.

5. The employee made subsequent amendments to her

claim, claiming the following dates of injury:

a. Back injury - 1961
b. Job stress and depression - 1968
c. Nervous colitis - 1972
d. Back problems 1972 to 1979
e. Upper right extremity and back - April 1, 1981
f. Hip and back - February 11, 1985
g. Posttraumatic stress and depression - August 16, 1985

6. The seven claimed incidents represent injury not occupational disease.

7. No wage or medical benefits were paid to this employee, by Ford Motor Company, in lieu of workers' compensation benefits.

8. No First Report of Injury was filed by Ford Motor Company for any of the seven injuries claimed.

9. No workers' compensation benefits were paid to the employee or on behalf of the employee, by Ford Motor Company/self-insured, for any of the seven injuries claimed by this employee in her Claim Petition and subsequent amended claims.

10. The time limitation for filing a workers' compensation claim, for the claims this employee claims on her amended claims, expired by August 16, 1991.

11. The evidence at the hearing on April 10, 1996, does not support a finding of physical or mental incapacity during the 6 years after her August 16, 1985, claimed injury at Ford, which would make this employee unable to perform or cause

to be performed, the actions necessary to initiate a claim under the Minnesota Workers' Compensation Law.

12. The employee was not incapacitated and unable to file or unable to direct the filing of a Claim Petition on her behalf, during the 6 year period following her last claimed injury at Ford.

13. The Claim Petition filed by this employee exceeded the six year time limitation of Minn. Stat. § 176.151(1)(3).

14. The self-insured employer's motion to dismiss is granted.

Based upon the foregoing Findings, the Compensation Judge makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED the Claim Petition of this employee filed herein on January 28, 1993, and subsequently amended, is hereby dismissed.

/s/
JANICE M. CULNANE
Compensation Judge
(612) 341-7635
TDD: (612) 341-7346

Dated at Minneapolis, Minnesota
this 29 day of April, 1996.
JMC:kp
Tape Recorded Hearing.

MEMORANDUM

Background

This employee was a long-term employee of Ford Motor Company. She sustained a slip and fall injury in 1981 for which no workers' compensation benefits were paid. Several incidents or injuries after that date are claimed by the employee to be work-related injuries. The employee sustained a nonwork-related head injury in May of 1984. The employee complained of tinnitus, and memory problems following her nonwork-related fall in May of 1984. (Petitioner's Exhibit D). She continued to have problems as a result of this injury and was unable to obtain a release to return to work which satisfied the requirements of Ford Motor Company. It was for this reason the employee was laid off/terminated. The employee brings a claim for workers' compensation injuries sustained at Ford. (See Finding No. 5). The employer made a motion for dismissal, claiming the statute of limitations had run. A hearing was held on April 10, 1996 to resolve this issue.

Motion to Dismiss

Following her termination, the employee eventually received long-term disability benefits. She also applied for, and was granted, Social Security disability benefits. At the hearing on April 10, 1996, the employee offered testimony concerning her daily activities, following her layoff/termination with Ford Motor Company. She testified she assumed responsibility for her own personal care and business affairs. In addition, she stated her mother was living with her throughout this entire

period and recently her daughter has been living with her. She states her daughter has health problems and she is assuming responsibility for the care of her adult daughter. The employee states she is responsible for paying her own bills, doing her own banking, doing her own shopping, and maintaining her household. She further stated she either completed, or made arrangements to have completed, her income taxes. She states these were filed on a timely basis. In addition, the employee began school at North Hennepin Community College in the early summer of 1993, and continues with her studies at the present time. An AA degree was awarded on September 1, 1995. After obtaining that degree, the employee has continued to take additional classes towards an Associate of Science degree, which she anticipates receiving in June of 1996. The employee maintained an impressive G.P.A. throughout her studies and graduated with her AA degree with B average.

In 1986, the employee activated a business which she had incorporated years earlier; however, she had not actively participated in any business activities under that corporate entity until 1986. At that time, the employee began an entrepreneurial activity of starting a video production company, working out of her home. She testified she was able to produce video from her home, which would be comparable to those done at commercial television or cable television studios. She further indicated she performed not only the filming, but the editing and post-filming production activities. She would hire individuals to help her as needed. The employee testified she is active in this business and currently has a major project, which is in the initial stages,

and she anticipates being able to devote more time to it in the near future.

In addition to being responsible for her own business and personal activities, the employee indicated she applied for both long-term disability insurance through John Hancock Insurance Company and Social Security benefits, and was successful in receiving both. In addition to these activities, the employee has, since her termination from Ford Motor Company, initiated several legal actions in both state and federal court. The extent to which the employee was involved in these cases varied. In some of the cases she acted *pro se*, in others she either hired or consulted with an attorney.

The Workers' Compensation Law sets out specific time limitations for filing workers' compensation cases. Under the circumstances of this employee's case, where no workers' compensation benefits have been paid, the claim for benefits must be initiated within six years of the injury. The most recently claimed injury of this employee occurred on or about August 16, 1985. As a result, the employee's claim for benefits should have been filed by August 16, 1991, unless a statutory exception is applicable. Minn. Stat § 176.151. The Claim Petition in this case was filed on January 28, 1993. Because it was agreed no workers' compensation benefits have been paid by Ford Motor Company to this employee for the seven injuries claimed in the Claim Petition, the two reasons which would provide the employee with an exception to extend the six year period for filing a Claim Petition, are mental or physical incapacity which caused the employee to be unable to perform

or caused to be performed the necessary requirements for initiating a workers' compensation claim. Minn. Stat. § 176.151(3). It should specifically be noted, the law does not require merely that a physical or mental condition exists. Instead, the law quite specifically states the physical or mental incapacity must be sufficient to cause an employee to be unable to perform or caused to be performed, the necessary requirements of filing a claim Petition. If the mere existence of a physical or mental condition tolled the statue of limitations, there would be no need for the statue of limitations to exist in workers' compensation cases, since physical injury is necessary to claim entitlement to workers' compensation benefits.

No opinion from either treating or evaluating doctors addressed the exact point as to whether or not the employee had the capacity to file a Claim Petition; therefore, the Court must look at medical records which describe the employee's mental and physical capacity during the six year period following her last claimed injury at Ford Motor Company, together with the employee's actions during this period, to determine whether she had the physical or mental capacity to perform or direct to be performed, the steps necessary to file a Claim Petition.

In terms of her mental and physical health, the employee repeatedly testified that she was not suffering from any mental illness during any period following her termination at Ford Motor Company through the date of the hearing. She states the fall she suffered in May of 1984 resulted in an organic brain injury which affected her math and English skills. She also referred to the memory problems and ringing in the ears, which

were documented in Petitioner's Exhibit D. The psychological records introduced at the hearing support the employee's claim and are unrebutted. A report from Dr. Wiener states that his impression of this employee is that she is "rational, intelligent, and in touch with reality." Although this report clearly was based on an evaluation after the six year period, the report does not offer the opinion of any mental incapacity during the six year period which could support the employee's position. (Petitioner's Exhibit F.) A report from a psychiatrist at the V.A. Hospital dated September 19, 1985, determined the employee did not have any seizure disorders, and a psychiatric evaluation determined the employee was not in need of any medication. However, it was noted the employee had problems in the area of characterological patterns. (Petitioner's Exhibit E). In conclusion, a review of the medical records submitted by the employee and the testimony of the employee, demonstrates this employee was not, during any period in the six years following her last claimed injury following her layoff/termination at Ford Motor Company, mentally incapacitated from either performing, or causing to be performed, the acts necessary to initiate a workers' compensation claim. This conclusion, based on the evidence presented at the hearing, is consistent with the employee's testimony concerning her daily activities throughout this period, which included responsibility for her own personal and business affairs, as well as those of family members. It also included starting and running a video production business, as well as applying for Social Security disability and long-term disability benefits. These actions demonstrate mental compe-

tence. For these reasons, the evidence overwhelmingly suggests this employee was not, in the six years following her most recently claimed injury, mentally incapacitated; therefore, the Minnesota Workers' Compensation Law does not permit an extension to the six year time limitation applicable for filing a workers' compensation claim pursuant to Minn. Stat. § 176.515, due to mental incapacity.

In addition to an extension to the six year statute of limitations for the initiation of a workers' compensation claim in cases of mental incapacity, worker's compensation also provides the same extension in cases of physical incapacity. The employee claims physical incapacity based not only on the problems she was having with her back, hip, and right upper extremity, but also with the problems she was having as a result of her nonwork-related head injury which occurred in May of 1984. She characterizes these problems as problems related to math, English, ringing in the ears, and memory problems. The employee introduced medical records, which document problems with her low back and legs (Petitioner's Exhibit K), as well as problems with her right upper extremity (Petitioner's Exhibit M). However, although problems described by the employee are documented in medical records, none of these problems are of the severity to cause physical incapacity which results in the employee being unable to perform or direct the actions required to conform with the time limitations established in the Minnesota Workers' Compensation Law. The Minnesota Workers' Compensation Law covers employees with a variety of disabilities. The law specifically has time limita-

tions which must be conformed to, in order for employees to secure their rights under this law. A narrow exception is made when employees are incapacitated. In the six years from the employee's most recent injury, the employee has not been incapacitated. Although she has had physical disability, the employee has, in spite of these physical difficulties, been able to care for herself and, to some extent, family members throughout this period. In addition, the employee has not only successfully maintained her own business affairs, she has started and successfully run self-employment activities in video production. She also has been involved in community and church related activities, demonstrating a high level of interest in community affairs. The employee's physical capabilities allowed her to perform her own shopping, banking, and business affairs. Her physical capabilities also enabled her to make successful application for both Social Security and long-term disability benefits. Although the employee has, during periods of the running of the statute of limitations, been hospitalized for periods not in excess of approximately one month, a period of hospitalization does not, without more, toll the statute of limitations. In addition, there was no evidence submitted at the hearing to indicate during the periods of hospitalization, the employee did not have the capacity to direct others to perform her affairs. Although there was evidence to indicate the employee was obtaining treatment for physical conditions during the running of the statute of limitations, there was insufficient evidence to indicate these problems resulted in physical incapacity sufficient to satisfy the tolling of the statute of limita-

tions. For this reason, it has been determined the employee did not have a physical incapacity which suspended the running of the statute of limitations.

Notice

Although the employee presented evidence concerning actual notice, implied notice, and notice of a trivial injury, no finding will be made on the notice issue, since it is not necessary to a determination of the running of the statute of limitations.

Sanctions

The employee urged sanctions against witnesses called. The Court declines to do so.

J.M.C.

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

IN THE MATTER OF:
DARLENE SAMMARCO MOTION
Alleged Mentally Ill.

Comes now Janice Allen Wheat, Assistant Anoka County Attorney, and respectfully requests the Court for an Order dismissing the above entitled matter.

/s/
Janice Allen Wheat
Assistant Anoka County Attorney

* * * * * * * * *

ORDER

IT IS HEREBY ORDERED that the commitment proceedings regarding the above-named person be hereby terminated.

BY THE COURT:

/s/
Judge of District Court

Dated: 6/17/85

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

CASE TITLE

WRIT OF

CERTIORARI

Darlene C. Sammarco,
Petitioner,

vs.

Ford Motor Company,
Self-insured,
Respondent.

MINNESOTA
SUPREME COURT
NUMBER: C9-97-71
WORKERS'
COMPENSATION
COURT OF APPEALS
NO. 473-32-1473

TO: The MINNESOTA SUPREME COURT:

You are hereby ordered to return to the United States Supreme Court within 30 days from this date the record, exhibits and proceedings in the above entitled matter so that this court

may review the decision of the Workers' Compensation Court of Appeals.

Copies of this writ and accompanying petition shall be served forthwith either personally or by mail upon the Secretary of the Minnesota Supreme Court, Workers' Compensation Court of Appeals, Workers' Compensation Judge Culnane Workers' and Respondent's Counsel:

Attorney Kathryn M. Hipp,
Counsel for Ford Motor Co.
Attorney ID No.: 224020
Attorney for Self-Insured Employer
4111 Central Ave. N.E.
Minneapolis, Minnesota 55421

Proof of service shall be filed with the clerk of the United States Supreme Court.

DATED:_____

By: _____
The Clerk of the United States Supreme Court